



## Missouri Department of Elementary and Secondary Education

— Making a positive difference through education and service —

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### Guidance Letter

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To: SPOE Staff, On-going Service Coordinators, Service Providers

From: Pam Williams, Director, Special Education Compliance

Subject: Eligibility Determination Issues

It has become clear through the compliance monitoring process and the questions we receive from the field that clarification is needed regarding First Steps eligibility criteria. The greatest areas in which we have identified concerns are Communication Development and Physical Development.

#### Communication Development

In order to be found eligible with a developmental delay in the area of communication, a child must exhibit a 50% delay or greater in overall communication (combined expressive and receptive). A 50% delay in only receptive or only expressive communication is not sufficient evidence, in and of itself, to identify a child as eligible for First Steps services.

This does not mean a child must have a 50% delay in both receptive and expressive communication in order to be eligible. Some evaluation instruments yield an overall combined score for receptive and expressive communication. If an instrument that has been used does not yield this type of data, the individual conducting the evaluation needs to provide information that enables the SPOE Intake Service Coordinator to determine what the overall communication level of the child is. **It is not sufficient to merely use an average of the two scores to calculate an overall communication level.** The speech therapist conducting the evaluation should have the expertise to interpret the data from the assessment that was given and be able to articulate this to the SPOE staff, parents, and others as appropriate. If several instruments were used, and the data

is conflicting, the individual(s) conducting the evaluations should be able to synthesize the information from the evaluations, parent report, medical information, etc. to help explain the variances and contribute to an informed decision about the child's eligibility and need for services.

**If communication is a suspected area of delay that will be used to determine eligibility for First Steps, an evaluation by a speech therapist must be used to support that decision.**

Information about the use of informed clinical opinion is addressed later in this document.

### **Physical Development**

In order to be found eligible with a developmental delay in the area of physical development, a child must exhibit a 50% delay or greater in overall physical development. A 50% delay in only gross motor or only fine motor is not sufficient evidence, in and of itself, to identify a child as eligible under First Steps.

The information discussed above related to interpretation of evaluation results in the area of communication should also be applied in the area of fine and gross motor development.

While it appears that it is specifically the areas of Developmental Delay – Communication and Physical Development that are of most concern at the present time, the following guidance is given to address general questions and issues related to eligibility determinations for First Steps

### **Eligibility Issues**

The process steps for referral, intake, and evaluation are covered in detail in the First Steps Early Intervention Practice Manual, so this process is not being repeated in this letter. Instead, a full description of Missouri's First Steps eligibility criteria has been included at the end of this letter for the convenience of the reader, and the following key points are also being highlighted to provide reminders or clarification regarding eligibility determination issues:

#### **Children referred based on diagnosed physical or mental conditions:**

Children referred to First Steps because of a diagnosed condition are not automatically eligible for First Steps. The first thing that the Intake Coordinator at the System Point of Entry (SPOE) must do is review the referral for potential eligibility. Those children who are referred by a physician or other medical personnel may have a condition that is clearly not one of the First Steps identified conditions or would not cause one to suspect a significant delay in any area of development. In those circumstances, the SPOE staff shall notify the referral source that a review of the referral has been conducted and that the referral is not accepted by the system. When families self-refer or are aware that the referral was made, a written Notice of Action Refused (along with a copy of the Parental Rights Brochure) must be provided to the family.

A diagnosed condition must be verified by credible medical reports. This may include information signed by an appropriate physician, case notes, and/or nursing logs.

When a physician refers a child to First Steps based on a condition that is not included on the lists of conditions within the First Steps Eligibility Criteria, he/she must indicate the specific

condition and the potential impact of this condition in any of the five developmental areas. The referral/evaluation must be signed by the physician.

Children referred based on suspected developmental delay:

In order to be found eligible for First Steps based on a developmental delay, the child, must be functioning at half (50%) the developmental level that would be expected for a child considered to be developing within normal limits and of equal age. The delay must be measured by appropriate diagnostic measures and procedures including the use of informed clinical opinion and must be identified in one or more of the following areas:

- Cognitive
- Communication development
- Adaptive development
- Physical development, including vision and hearing
- Social or emotional development

Informed Clinical Opinion

The phrase **“as measured by appropriate diagnostic measures and procedures including the use of informed clinical opinion” is important.** A multi-modal evaluation/assessment process is required in First Steps. All parts of that process must be considered when the eligibility criterion is applied. **No child may be declared eligible on the basis of a single test score or subtest score. The test scores must be compared to other pieces of information such as parent report and observation to see if it is compatible with those sources of information.**

In cases where there is subtest scatter or significant differences in subtests of the same domain (for example, a 50% delay in expressive language, 25% delay in receptive language), the professional who administered the evaluation should use informed clinical opinion as to the significance of that split between sub domains. Issues to consider include what instrument was used, what were the specific items required by the instrument as measurements, is this information verified by other sources of information, and given the professional’s experience and judgment, does this split between domains constitute a 50% delay in the domain as a whole for a child of this age? **If so, the evaluator needs to clearly document the support for this position. The documentation should relate to expected developmental milestones for the age of child and impact that the deficits have on those milestones.**

**Subtest scores of the Vineland should be carefully examined.** When the subtest scores for motor or language indicate significant delays, that should be considered as only one piece of information and is not the criterion used for eligibility. The instrument measures adaptive behavior, not language or motor. Additional evaluations designed to measure performance in language or motor need to be available to verify the Vineland indications. However, the Bayley is constructed to provide valid, reliable subtest scores in motor that may be considered separately from the mental development index. In some cases, the split may in fact represent a developmental delay that is severe enough to warrant eligibility. In other cases, the significance does not support eligibility in First Steps.

The professionals who administer the evaluations must, by regulation and law, meet the highest standards set by the state. For example, one expects speech pathologists to make

recommendations concerning the impact in the domain of speech/language, etc. It is unacceptable for any professional to make clinical judgments outside his or her respective discipline and expertise.

Some children may exhibit atypical development that is significant enough to contribute to an eligibility determination based on informed clinical opinion. Atypical development refers to behavior or functioning that is abnormal for children without disabilities who are the same age. Atypical development may describe a child who presents a very unusual course of development such as the child who has a 50% delay in receptive language abilities but appears age appropriate in expressive language. Or, the child may engage in perseverative behaviors such as echolia or self abusive behaviors. Children who are eligible for First Steps based upon atypical development are children's whose development is highly unusual and is not easily captured by checklists and evaluation tools. It is not appropriate to use this rationale for children who show general scatter in developmental domains or who have global delays that are not at the 50% level in any domain.

**Eligibility should never be determined based upon insufficient information or conflicting information. It is appropriate to require further evaluation/assessment before determining eligibility.**

### **Missouri's Eligibility Criteria for First Steps (Missouri Regulations for Part C Section I)**

Children who are eligible for early intervention services are children between the ages of birth and 36 months who have been determined to have:

- A. a diagnosed physical or mental condition associated with developmental disabilities or has a high probability of resulting in a developmental delay or disability.

### **STATE DEFINITION OF DIAGNOSED CONDITIONS**

The State of Missouri has adopted the following conditions to meet the definition of "diagnosed physical or mental condition that has a high probability of resulting in a developmental delay":

1. Conditions diagnosed at birth or within 30 days post birth (newborn conditions)
  - a. Very Low Birth Weight (VLBW; less than 1,500 grams) with one or more conditions:
    - Apgar of 6 or less at 5 minutes
    - Intracranial bleeds (Grade II, III, or IV)
    - Ventilator dependent for 72 hours or more
    - Asphyxiation
2. Conditions Diagnosed (Neonatal/Infant/Toddler Conditions)
  - a. Genetic conditions known to be associated with mental retardation or developmental disabilities including but not limited to:
    - Down Syndrome
    - Cri-du-Chat Syndrome
    - Klinefelter's Syndrome
    - Trisomy 18 Syndrome (Edward's)
    - Turner's Syndrome
    - Trisomy 13 Syndrome (Patau's)

- Triple X Syndrome
- Fragile X Syndrome
- Prader Willi

b. Additional conditions known to be associated with mental retardation or developmental disabilities including but not limited to:

- Hypoxic Ischemic Encephalopathy (HIE) and at term (36 weeks gestation or more
- Cranio-facial anomalies
- Epilepsy/Seizure Disorder
- Spina Bifida
- Blindness, including visual impairments
- Macro/Microcephalus, including Hydrocephalus
- Deafness, including hearing impairments
- Fetal Alcohol Syndrome
- Cyanotic Congenital Heart Disease
- PKU
- Cerebral Palsy
- Viruses/bacteria (Herpes, syphilis, cytomegalovirus, toxoplasmosis, and rubella)
- Acquired Immune Deficiency Syndrome (AIDS)
- Autism Spectrum Disorders

3. Other conditions known to be associated with mental retardation or developmental disabilities must be based upon informed clinical opinion by Board certified neonatologists, pediatricians, geneticists, and/or pediatric neurologists. These physicians may refer a child by indicating the specific condition and the potential impact of this condition in any of the five developmental areas.

B. A developmental delay, as measured by appropriate diagnostic measures and procedures emphasizing the use of informed clinical opinion, is defined as a child who is functioning at half the developmental level that would be expected for a child developing within normal limits and of equal age. In the case of infants born prematurely, the adjusted chronological age (which is calculated by deducting one-half of the prematurity from the child's chronological age) should be assigned for a period of up to 12 months or longer if recommended by the child's physician. The delay must be identified in one or more of the following areas:

- a. Cognitive development
- b. Communication development
- c. Adaptive development
- d. Physical development, including vision and hearing
- e. Social or emotional development